

Senate File 2173 - Introduced

SENATE FILE 2173
BY COMMITTEE ON ENVIRONMENT &
ENERGY INDEPENDENCE

(SUCCESSOR TO SSB 3116)

A BILL FOR

1 An Act relating to activities of the department of public
2 safety including regulating the storage of flammable
3 and combustible liquids in aboveground storage tanks and
4 retaining fees.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 100.1, subsection 5, Code 2009, is
2 amended to read as follows:

3 5. To promulgate fire safety rules. The state fire marshal
4 shall have exclusive right to promulgate fire safety rules as
5 they apply to enforcement or inspection requirements by the
6 state fire marshal, but the rules shall be promulgated ~~only~~
7 ~~after public hearing~~ pursuant to chapter 17A. Wherever by any
8 statute the fire marshal or the department of public safety is
9 authorized or required to promulgate, proclaim, or amend rules
10 and minimum standards regarding fire hazards or fire safety or
11 protection in any establishment, building or structure, the
12 rules and standards shall promote and enforce fire safety, fire
13 protection and the elimination of fire hazards as the rules may
14 relate to the use, occupancy and construction of the buildings,
15 establishments or structures. The word "*construction*" shall
16 include, but is not limited to, electrical wiring, plumbing,
17 heating, lighting, ventilation, construction materials,
18 entrances and exits, and all other physical conditions of the
19 building which may affect fire hazards, safety or protection.
20 The rules and minimum standards shall be in substantial
21 compliance except as otherwise specifically provided in this
22 chapter, with the standards of the national fire protection
23 association relating to fire safety as published in the
24 national fire codes.

25 Sec. 2. Section 100C.9, subsection 2, Code 2009, is amended
26 to read as follows:

27 2. Notwithstanding section 8.33, fees collected by the
28 division of state fire marshal that remain unencumbered or
29 unobligated at the close of the fiscal year shall not revert
30 but shall remain available for expenditure for the purposes
31 designated ~~until the close of the~~ in succeeding fiscal
32 ~~year~~ years.

33 Sec. 3. Section 101.1, Code 2009, is amended to read as
34 follows:

35 101.1 Rules by fire marshal.

1 1. The state fire marshal is hereby empowered and directed
2 to formulate and adopt and from time to time amend or revise
3 and to promulgate, in conformity with and subject to the
4 conditions set forth in this chapter, reasonable rules for the
5 safe transportation, storage, handling, and use of combustible
6 liquids, flammable liquids, liquefied petroleum gases, and
7 liquefied natural gases.

8 2. For purposes of this chapter:

9 a. "Combustible liquid" means any liquid that has a
10 closed-cup flash point greater than or equal to 100 degrees F.

11 ~~a.~~ b. "Flammable liquid" means a liquid having a with a
12 closed-cup flash point below 200 100 degrees F. and a Reid
13 vapor pressure not exceeding forty p.s.i. absolute, 2026.6 mm
14 Hg, at 100 degrees F.

15 ~~b.~~ c. "Liquefied petroleum gas" means material composed
16 predominantly of any of the following hydrocarbons, or mixtures
17 of the same: Propane, propylene, butanes (normal butane or
18 isobutane) and butylenes.

19 ~~c.~~ d. "Liquefied natural gas" means a fuel in the liquid
20 state composed predominantly of methane and which may contain
21 minor quantities of ethane, propane, nitrogen, or other
22 components normally found in natural gas.

23 Sec. 4. Section 101.3, Code 2009, is amended to read as
24 follows:

25 **101.3 Separate rules for liquids and gas.**

26 The rules covering combustible and flammable liquids
27 and shall be formulated and promulgated separately from those
28 covering liquefied petroleum gas shall be separately formulated
29 and separately promulgated.

30 Sec. 5. Section 101.5, Code 2009, is amended to read as
31 follows:

32 **101.5 ~~Publication of rules~~ Rules.**

33 The rules shall be promulgated pursuant to chapter 17A, ~~only~~
34 ~~after a public hearing at least twenty days' notice of the~~
35 ~~time and place of which is given by publication in the Iowa~~

1 ~~administrative bulletin and by mail to any person who has filed~~
2 ~~the person's name and address with the state fire marshal for~~
3 ~~the purpose of receiving the notice.~~

4 Sec. 6. Section 101.12, Code 2009, is amended by striking
5 the section and inserting in lieu thereof the following:

6 **101.12 Aboveground tanks authorized.**

7 1. An aboveground flammable or combustible liquid storage
8 tank may be installed at a retail motor vehicle fuel outlet,
9 subject to rules adopted by the state fire marshal.

10 2. Rules adopted by the state fire marshal pursuant to this
11 section shall be in substantial compliance with the applicable
12 standards of the national fire protection association.

13 3. The installation of an aboveground flammable or
14 combustible liquid storage tank at a retail motor vehicle fuel
15 outlet shall also be subject to approval by the governing body
16 of the local governmental subdivision which has jurisdiction
17 over the fuel outlet.

18 Sec. 7. Section 101.21, Code 2009, is amended to read as
19 follows:

20 **101.21 Definitions.**

21 As used in this ~~part~~ division unless the context otherwise
22 requires:

23 1. "Aboveground petroleum flammable or combustible
24 liquid storage tank" means one or a combination of tanks,
25 including connecting pipes connected to the tanks which
26 are used to contain an accumulation of petroleum flammable
27 or combustible liquid and the volume of which, including
28 the volume of the underground pipes, is more than ninety
29 percent above the surface of the ground. Aboveground
30 petroleum flammable or combustible liquid storage tank does not
31 include any of the following:

32 a. Aboveground tanks of one thousand one hundred gallons or
33 less capacity.

34 b. Tanks used for storing heating oil for consumptive use
35 on the premises where stored.

1 c. Underground storage tanks as defined by section 455B.471.

2 d. A flow-through process tank, or a tank containing
3 a regulated substance, other than motor fuel used for
4 transportation purposes, for use as part of a manufacturing
5 process, system, or facility.

6 ~~2. "Nonoperational aboveground petroleum tank" means an~~
7 ~~aboveground storage tank in which petroleum is not deposited or~~
8 ~~from which petroleum is not dispensed on or after July 1, 1989.~~

9 ~~3.~~ 2. "Operator" means a person in control of, or having
10 responsibility for, the daily operation of an aboveground
11 petroleum flammable or combustible liquid storage tank.

12 ~~4.~~ 3. "Owner" means:

13 a. In the case of an aboveground petroleum flammable or
14 combustible liquid storage tank in use on or after July 1,
15 1989, a person who owns the aboveground petroleum flammable or
16 combustible liquid storage tank used for the storage, use, or
17 dispensing of petroleum flammable or combustible liquid.

18 b. In the case of an aboveground petroleum flammable or
19 combustible liquid storage tank in use before July 1, 1989, but
20 no longer in use on or after that date, a person who owned the
21 tank immediately before the discontinuation of its use.

22 ~~5.~~ 4. "Petroleum" means petroleum as defined in section
23 455B.471.

24 ~~6.~~ 5. "Release" means spilling, leaking, emitting,
25 discharging, escaping, leaching, or disposing from an
26 aboveground petroleum flammable or combustible liquid storage
27 tank into groundwater, surface water, or subsurface soils.

28 ~~7.~~ 6. "State fire marshal" means the state fire marshal or
29 the state fire marshal's designee.

30 ~~8.~~ 7. "Tank site" means a tank or grouping of tanks within
31 close proximity of each other located on a facility for the
32 purpose of storing petroleum flammable or combustible liquid.

33 Sec. 8. Section 101.22, Code 2009, is amended to read as
34 follows:

35 **101.22 Report of existing and new tanks — registration fee**

1 — tag — penalty.

2 1. Except as provided in subsection 2, the owner or
3 operator of an aboveground ~~petroleum~~ flammable or combustible
4 liquid storage tank existing on ~~or before July 1, 1989~~ July 1,
5 2010, shall notify the state fire marshal in writing by ~~May 1,~~
6 ~~1990~~ October 1, 2010, of the existence of each tank and specify
7 the age, size, type, location, and uses of the tank.

8 2. The owner of an aboveground ~~petroleum~~ flammable or
9 combustible liquid storage tank taken out of operation ~~between~~
10 ~~January 1, 1979, and July 1, 1989~~ on or before July 1, 2010,
11 shall notify the state fire marshal in writing by ~~July 1,~~
12 ~~1990~~ October 1, 2010, of the existence of the tank unless the
13 owner knows the tank has been removed from the site. The
14 notice shall specify, to the extent known to the owner, the
15 date the tank was taken out of operation, the age of the
16 tank on the date taken out of operation, the size, type, and
17 location of the tank, and the type and quantity of substances
18 left stored in the tank on the date that it was taken out of
19 operation.

20 3. An owner or operator ~~which~~ who brings into use an
21 aboveground ~~petroleum~~ flammable or combustible liquid storage
22 tank after July 1, ~~1989~~ 2010, shall notify the state fire
23 marshal in writing within thirty days of the existence of the
24 tank and specify the age, size, type, location, and uses of the
25 tank.

26 4. The registration notice of the owner or operator to
27 the state fire marshal under subsections 1 through 3 shall
28 be accompanied by an annual fee of ten dollars for each tank
29 included in the notice. All moneys collected shall be retained
30 by the department of public safety and are appropriated for the
31 use of the state fire marshal. The annual renewal fee applies
32 to all owners or operators who ~~filed~~ file a registration notice
33 with the state fire marshal pursuant to subsections 1 through
34 3.

35 5. A person who deposits ~~petroleum~~ flammable or combustible

1 liquid in an aboveground petroleum flammable or combustible
2 liquid storage tank shall notify the owner or operator in
3 writing of the notification requirements of this section.

4 6. A person who sells or constructs a tank intended to be
5 used as an aboveground storage tank shall notify the purchaser
6 of the tank in writing of the notification requirements of this
7 section applicable to the purchaser.

8 7. It is unlawful to deposit petroleum flammable or
9 combustible liquid in an aboveground petroleum flammable or
10 combustible liquid storage tank which has not been registered
11 pursuant to subsections 1 through 4.

12 8. The state fire marshal shall furnish the owner or
13 operator of an aboveground petroleum flammable or combustible
14 liquid storage tank with a registration tag for each
15 aboveground petroleum flammable or combustible liquid storage
16 tank registered with the state fire marshal.

17 a. The owner or operator shall affix the tag to the fill
18 pipe of each registered aboveground petroleum flammable or
19 combustible liquid storage tank.

20 b. A person who conveys or deposits petroleum flammable
21 or combustible liquid shall inspect the aboveground
22 petroleum flammable or combustible liquid storage tank to
23 determine the existence or absence of the registration tag.
24 If a registration tag is not affixed to the aboveground
25 petroleum flammable or combustible liquid storage
26 tank fill pipe, the person conveying or depositing the
27 petroleum flammable or combustible liquid may deposit the
28 petroleum flammable or combustible liquid in the unregistered
29 tank. However, the deposit is allowed only in the single
30 instance, that the person provides the owner or operator with
31 another notice as required by subsection 5, and that the
32 person provides the owner or operator with an aboveground
33 petroleum flammable or combustible liquid storage tank
34 registration form.

35 c. It is the owner or operator's duty to comply with

1 registration requirements. A late registration penalty of
2 twenty-five dollars is imposed in addition to the registration
3 fee for a tank registered after the required date.

4 Sec. 9. Section 101.22A, Code 2009, is amended to read as
5 follows:

6 **101.22A Exemption.**

7 An aboveground ~~petroleum~~ flammable or combustible
8 liquid storage tank which is subject to regulation or
9 registration under either the federal department of
10 transportation or state department of transportation or both,
11 is exempt from the registration requirements of section 101.22.

12 Sec. 10. Section 101.23, Code 2009, is amended to read as
13 follows:

14 **101.23 State fire marshal reporting rules.**

15 The state fire marshal shall adopt rules pursuant to chapter
16 17A relating to reporting requirements necessary to enable
17 the state fire marshal to maintain an accurate inventory of
18 aboveground ~~petroleum~~ flammable or combustible liquid storage
19 tanks.

20 Sec. 11. Section 101.24, subsections 1 and 2, Code 2009, are
21 amended to read as follows:

22 1. Inspect and investigate the facilities and records of
23 owners and operators of aboveground ~~petroleum~~ flammable or
24 combustible liquid storage tanks with a capacity of fifteen
25 thousand or more gallons, as necessary to determine compliance
26 with this division and the rules adopted pursuant to this
27 division. An inspection or investigation shall be conducted
28 subject to subsection 4. For purposes of developing a rule,
29 maintaining an accurate inventory, or enforcing this division,
30 the department may:

31 a. Enter at reasonable times an establishment or other place
32 where an aboveground storage tank is located.

33 b. Inspect and obtain samples from any person of
34 ~~petroleum~~ flammable or combustible liquid or another regulated
35 substance and conduct monitoring or testing of the tanks,

1 associated equipment, contents, or surrounding soils, air,
2 surface water, and groundwater. Each inspection shall be
3 commenced and completed with reasonable promptness.

4 (1) If the state fire marshal obtains a sample, prior to
5 leaving the premises, the fire marshal shall give the owner,
6 operator, or agent in charge a receipt describing the sample
7 obtained and if requested a portion of each sample equal in
8 volume or weight to the portion retained. If the sample is
9 analyzed, a copy of the results of the analysis shall be
10 furnished promptly to the owner, operator, or agent in charge.

11 (2) Documents or information obtained from a person under
12 this subsection shall be available to the public except as
13 provided in this subparagraph. Upon a showing satisfactory to
14 the state fire marshal by a person that public disclosure of
15 documents or information, or a particular part of the documents
16 or information to which the state fire marshal has access
17 under this subsection would divulge commercial or financial
18 information entitled to protection as a trade secret, the
19 state fire marshal shall consider the documents or information
20 or the particular portion of the documents or information
21 confidential. However, the documents or information may be
22 disclosed to officers, employees, or authorized representatives
23 of the United States charged with implementing the federal
24 Solid Waste Disposal Act, to employees of the state of Iowa or
25 of other states when the document or information is relevant
26 to the discharge of their official duties, and when relevant
27 in a proceeding under the federal Solid Waste Disposal Act or
28 this division.

29 2. Maintain an accurate inventory of aboveground
30 ~~petroleum~~ flammable or combustible liquid storage tanks.

31 Sec. 12. Section 101A.5, unnumbered paragraph 1, Code 2009,
32 is amended to read as follows:

33 The state fire marshal shall ~~prepare, adopt, and distribute~~
34 ~~to permit-issuing authorities and other interested persons,~~
35 ~~without cost, rules in accordance with provisions of chapter~~

1 ~~17A,~~ adopt rules pursuant to chapter 17A pertaining to the
2 manufacture, transportation, storage, possession, and use of
3 explosive materials. Rules adopted by the state fire marshal
4 shall be compatible with, but not limited to the national
5 fire protection association's pamphlet number 495 and federal
6 rules pertaining to commerce, possession, storage, and use of
7 explosive materials. Such rules shall:

8 EXPLANATION

9 This bill relates to activities of the department of public
10 safety including regulating the storage of flammable and
11 combustible liquids in aboveground storage tanks and retaining
12 fees.

13 Currently, the department of public safety retains, as
14 repayment receipts, certain fees collected pursuant to Code
15 chapter 101C relating to the regulation of fire extinguishing
16 and alarm systems contractors and installers. The bill allows
17 such repayment receipts that remain unencumbered or unobligated
18 at the close of a fiscal year to be retained by the department
19 for succeeding fiscal years.

20 The bill changes a number of provisions regarding the
21 storage of fuel and liquefied gases in aboveground storage
22 tanks in Code chapter 101. The bill adds a definition of
23 "combustible liquid" and changes the definitional standards for
24 flammable liquids. Currently, the Code refers to "petroleum"
25 storage tanks in Code chapter 101. The bill changes these
26 references to "flammable or combustible liquid storage tanks"
27 where appropriate.

28 The bill requires an owner or operator of aboveground
29 flammable or combustible liquid storage tanks to notify the
30 state fire marshal of their existence prior to October 1, 2010,
31 and provide additional information such as the age, size, type,
32 location, and uses of the tanks. The bill requires an owner or
33 operator of a tank that is taken out of operation on or before
34 July 1, 2010, to notify the state fire marshal of the existence
35 of the tank by October 1, 2010.